

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 July 2012

**Public Authority:** Whittington Hospital NHS Trust  
**Address:** Magdala Avenue  
London  
N19 5NF

### Decision (including any steps ordered)

---

1. The complainant requested from Whittington Hospital NHS Trust ("the Trust") a copy of the full documentation for the assessment of eligibility for the Blue Badge Scheme which provides parking concessions for disabled people. The Trust provided some information but withheld the detailed scoring criteria for the assessment under section 31(1)(a) (prejudice to the prevention or detection of crime).
2. The Commissioner's decision is that the Trust has correctly applied section 31(1)(a) to the withheld information and he does not require it to take any steps to ensure compliance with the legislation.

### Request and response

---

3. On 16 May 2011, the complainant wrote to the Trust, who carried out assessments of eligibility for Blue Badges on behalf of Haringey Council, and requested information in the following terms:

*"I request the entire assessment package as used by the L.B.Haringay in processing Blue Badge/ Disabled parking permit applications"*

4. The Trust responded on 21 June 2011. It provided some information including the assessment form, which included details of the 21 mobility tests that were carried out, the maximum score for each test and the pass mark that had to be obtained for eligibility for a Blue Badge. During the course of subsequent correspondence, the

complainant made it clear that he wanted *"...the entire package used by medical professionals to make the decision"* in relation to eligibility for a Blue Badge.

5. On 2 September 2011 the Trust wrote to the complainant and refused to provide the detailed scoring system used in assessing Blue Badge applications under section 31(1)(a) of FOIA.
6. It appears that the complainant attempted to request an internal review. He wrote to the Trust to express his dissatisfaction with not being provided with all of the information that he had requested. The Trust informed the Commissioner that the person who carried out its internal reviews did not appear to have received this request. It suggested that this may have been due to the Trust moving to a new email system at the time. As a result no internal review was carried out.

### **Scope of the case**

---

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled, in particular the Trust's refusal to disclose a copy of the detailed scoring system for the assessment of eligibility for a Blue Badge.
8. The Commissioner considered whether the Trust was entitled to rely on section 31(1)(a) of FOIA to withhold the detailed scoring system for the Blue Badge Scheme.

### **Reasons for decision**

---

#### **Section 31 – Law enforcement**

9. Section 31(1)(a) of FOIA states that:

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(a) the prevention or detection of crime,"*

10. The Trust has argued that disclosure of the information withheld under section 31(1)(a) would be likely to prejudice the prevention or detection of crime.

## **Engagement of section 31**

11. The Commissioner initially considered whether the relevant criteria for the engagement of section 31(1)(a) were satisfied.

### **(i) Applicable interest within the exemption**

12. The Commissioner considered whether the prejudice claimed by the Trust is relevant to section 31. The Trust argued that the disclosure of the detailed scoring system used in assessing Blue Badge applications would be likely to lead to abuse of the Blue Badge scheme by people who were prepared to use fraud and/or deception to meet the eligibility criteria. Based on these arguments, the Commissioner accepts that the prejudice claimed by the FSA relates to the prevention of crime.

### **(ii) The nature of the prejudice**

13. The Commissioner next went on to consider whether the prejudice being claimed was "real, actual or of substance" ie not trivial and whether there was a causal link between disclosure and the prejudice claimed. With regard to the first element, the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant.

14. With regard to the second element, the public authority needs to be able to establish that the disclosure of the information would be likely to lead to the harmful consequences claimed.

15. The Commissioner, having examined the withheld information, notes that the assessment comprises 21 mobility tests that have a scoring system of 0-3 in each case, with the higher score indicating the highest level of disability. The detailed scoring matrix indicates for each test the threshold that has to be met to move from one score to the next.

16. The Trust explained that it is contended by professional staff with expertise in disability that knowledge of these thresholds would enable an applicant to adjust their normal performance in order to increase their score. Whilst an individual could not perform above their maximum potential, it would be very easy to control performance to be worse than a predetermined level. The Trust believed that, as virtually all the tests involved quantified performance, deliberate under-performance could result in a Blue Badge being acquired by deception.

17. The Commissioner accepts that, given that the mobility tests are largely assessed by means of observation, it is not difficult to envisage that a person who was intent on obtaining a Blue Badge and who knew precisely what performance criteria needed to be

satisfied to achieve a high score on each of the tests, could dishonestly moderate their performance in an attempt to achieve a pass mark. Such behaviour would clearly be criminal in nature. The Commissioner is therefore satisfied that the disclosure of the withheld information is likely to lead to the harmful consequences claimed by the Trust.

18. The Commissioner would emphasise that there is no suggestion that the complainant requested the information for anything other than legitimate reasons. However, he is mindful that a disclosure under FOIA is a disclosure to the world at large. Consequently, it is conceivable that people less scrupulous than the complainant could obtain this information if it were to be disclosed under the Act.

### **(iii) The likelihood of prejudice**

19. The Trust has argued that the disclosure of the withheld information would be likely to prejudice the prevention of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that *"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."* (para 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
20. The Commissioner accepts that, after reviewing the withheld information, the disclosure of the detailed performance criteria that need to be satisfied in relation to the individual scores for the mobility tests would result in a real and significant risk of prejudice to the prevention of crime.
21. The Commissioner, in consequence of the above, accepts that section 31(1)(a) is engaged. As it is a qualified exemption, he went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest test**

#### **Public interest arguments in favour of disclosing the information**

22. The Commissioner recognises the public interest in transparency and openness in public authority decision making. Disclosure of the withheld information would provide the public with more information about the system for allocation of Blue Badges. It may assist the public in satisfying itself that appropriate criteria were being applied to determine eligibility for Blue Badges and that therefore the system

was a fair one. This in turn would reassure the public that public money was being spent effectively and appropriately.

23. Disclosure of the withheld information may also allow people who are refused a Blue Badge to more effectively challenge that decision by providing them with more information about how scores are allocated for each of the mobility tests.
24. The Commissioner notes however that the Trust disclosed details of the nature of the 21 mobility tests that are carried out in assessing eligibility for a Blue Badge, the maximum score for each test and the pass mark. In the Commissioner's view, this goes some way to satisfying the relevant public interest in transparency and accountability.

### **Public interest arguments in favour of maintaining the exemption**

25. The Commissioner has accepted that disclosure of the detailed scoring criteria for the mobility tests would be likely to prejudice the prevention of crime by assisting those people who wished to dishonestly obtain a Blue Badge to moderate their performance in an attempt to achieve a pass mark. This clearly creates a very strong public interest in favour of withholding the requested information.
26. The Trust also pointed the Commissioner to evidence of previous abuse of the Blue Badge system and the consequent public concern that this had raised. This had resulted in a review being carried out by the Department for Transport. Part of the result of this review was changes to the assessment process with a move towards more standardised, independent and objective assessments.
27. The Commissioner acknowledges the public interest in the public having confidence that the assessment of eligibility for a Blue Badge is not only carried out fairly but also that, as far as possible, there are no opportunities for abuse of that process by those intent on dishonestly obtaining a Blue Badge.

### **Balance of the public interest arguments**

28. The Commissioner acknowledges the public interest in the disclosure of the withheld information to promote transparency and accountability. However, in his view, this is outweighed by the strong public interest in preventing the prejudice to the prevention of crime that would be likely to occur from disclosure and which is outlined above. He has consequently determined that the Trust correctly applied section 31(1)(a) to the withheld information.

## Right of appeal

---

29. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**